

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
v.) CASE NO. 2:09-cr-128-MEF
) (WO)
RASHEEN JAHMAL SMITH)

O R D E R

On November 23, 2009, the defendant filed an Unopposed Motion to Continue (Doc. #58). While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985), the Court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Speedy Trial Act provides generally that the trial of a defendant in a criminal case shall commence within 70 days of the latter of the filing date of the indictment or the date the defendant appeared before a judicial officer in such matter. 18 U.S.C. §3161(c)(1). *See United States v. Vasser*, 916 F.2d 624 (11th Cir. 1990).

The Act excludes from this 70 day period any continuance that the judge grants "on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A).

The motion states that the defendant has pending a motion to suppress. The defendant's objections to the Recommendation are due on or before November 30, 2009. The Court's ruling on defendant's motion to suppress will likely be dispositive. Defense counsel needs more time to conclude his investigation, in Barbour County, of the incidents

comprising the indictment. Defense counsel is still attempting to locate a potential witness to the second stop of defendant identified on the most recent video provided by the Alabama Department of Public Safety. Counsel for the government does not oppose the request for a continuance. Consequently, the Court concludes that a continuance of this case is warranted and that the ends of justice served by continuing this case outweighs the best interest of the public and the defendant in a speedy trial. *See United States v. Davenport*, 935 F.2d 1223, 1235 (11th Cir. 1991)(reasonable time necessary for effective preparation is a significant factor for granting a continuance under the Speedy Trial Act).

Accordingly, it is hereby ORDERED:

1. That the defendant's motion to continue filed on November 23, 2009 is GRANTED.
2. That the trial of this case is continued from the December 7, 2009 trial term to the March 22, 2010 trial term in Montgomery, Alabama.
3. That the Magistrate Judge conduct a pretrial conference prior to the March 22, 2010 trial term.

DONE this the 25th day of November, 2009.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE